

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

July 21, 2005 '05 JUL 21 PM 12 52

Re. Petition to Establish Generic Docket to )  
Consider Amendments to Interconnection ) Docket No. E04-00381Y AUTHORITY  
Agreements Resulting from Changes of Law ) DOCKET ROOM

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**RESPONSE OF COMPSOUTH TO BELL SOUTH'S MOTION TO FILE REPLY BRIEF**

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Competitive Carriers of the South, Inc. ("CompSouth") opposes the Motion filed by BellSouth Telecommunications, Inc. ("BellSouth") asking for permission to file an unscheduled brief contrary to the procedural order issued by the Hearing Officer.

At a pre-hearing conference on May 26, 2005, the parties agreed to a procedural schedule in this docket. That schedule was incorporated into a letter filed by BellSouth on May 26 and an order issued June 1 by Director Deborah Tate, acting as Hearing Officer. The schedule provided that motions for summary judgment would be due on June 1 and responses to the motions due on July 1, 2005.

Pursuant to that Order, BellSouth filed a summary judgment motion on June 1; CompSouth and others filed a response on July 1.

On July 14, twelve days before the scheduled filing of direct testimony, BellSouth filed an unscheduled twenty-page reply brief addressing, once again, issues raised in the summary judgment motion. With the brief, BellSouth filed a motion asking, in effect, that the procedural schedule be changed to permit the filing of BellSouth's latest brief.<sup>1</sup>

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<sup>1</sup> BellSouth offers no explanation for its request other than to point out that the company also filed a Reply Brief on the same issues in Georgia and, therefore, "the Authority should have at least as much information available to it in making decisions as the Georgia Commission." BellSouth Motion, at 2. Perhaps, in the next case, Tennessee need

CompSouth opposes the motion. It is too late now for BellSouth to seek to change the rules under which the parties agreed to operate. It is unfair to expect CompSouth, which is now deeply involved in trying to prepare testimony for filings in Tennessee and other states, to digest and respond to any new arguments or misstatements that may be contained in the Reply.

One, particularly egregious, example demonstrates why BellSouth's motion should be denied.

As CompSouth explained in detail, at pp. 10-12 of the Response to BellSouth, Section 271 of the federal Telecommunications Act expressly requires BellSouth to offer CLECs the use of certain unbundled network elements, such as loops and switching, which are spelled out in Section 271(c)(2)(B). That offering must be made in an interconnection agreement (or a general statement of terms and conditions) approved by the state commission under Section 252.

In "reply," BellSouth bends the limits of advocacy beyond recognition. At page 12, BellSouth states, "The CLECs also argue that Section 271(c)(1) provides that 'the terms and conditions for the checklist items in Section 271 must be in an approved interconnection agreement.' Joint CLECs' Response, at 12. Section 271(c)(1) says nothing of the sort . . . It says nothing about incorporating Section 271 elements into the Section 252 agreements . . ."

How can both statements be true? They cannot. BellSouth intentionally twisted the facts.

The CLECs did not say that "Section 271(c)(1)" requires "incorporating Section 271 elements into Section 252 agreements." That requirement is found in Section 271, but it is in sub-paragraph (c)(2), not (c)(1), as clearly spelled out in the CLECs brief and, without doubt, as clearly understood by BellSouth.

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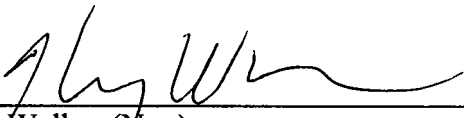
not bother to adopt a procedural schedule, it should just get copies of the Georgia pleadings so that each state will have "at least as much information" as the other

This is not a minor point; it lies at the heart of the argument concerning this agency's jurisdiction over 271 UNEs. The Act specifically requires that the UNEs listed in Section 271 be offered to CLECs in state-approved interconnection agreements. BellSouth knows that. Instead of acknowledging the point or even making an honest argument, BellSouth files a "Reply" which intentionally misrepresents both the CLECs' argument and the plain language of the statute.

CompSouth has not carefully reviewed BellSouth's "Reply" to determine whether it contains other, similar misstatements. CompSouth should not have to. The brief is not consistent with the procedural order and BellSouth offers no good reason to make an exception.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to:

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on this the 21<sup>st</sup> day of July, 2005.

  
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Henry M. Walker